

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

RICHARD LEE,

Plaintiff,

vs.

CITY OF SEATTLE, SEATTLE POLICE
DEPARTMENT and SPD INTERIM CHIEF
HARRY BAILEY and SPD DETECTIVE
MIKE CIESYNSKI,

Defendants.

No. 14-2-09292-0 SEA

REPLY TO DEFENDANTS' MOTION TO
DISMISS AND, IN THE ALTERNATIVE,
MOTION FOR SUMMARY JUDGMENT

Despite twice being put on notice that he had not properly served the City, Lee failed to follow the required procedure for serving the City before the statute of limitations had passed.¹ Thus, this case should be dismissed with prejudice.

A litigant must deliver a copy of the summons "to the mayor, city manager, or ... to the mayor's or city manager's designated agent or the city clerk thereof." RCW 4.28.080(2). The Seattle city clerk is the designated agent for service of summons for purposes RCW 4.28.080

¹ The City pleaded failure to properly serve as an affirmative defense in its Answer to Lee's Complaint, which was filed and served on April 21, 2014. The City again informed Lee that he had failed to properly serve the City with his Complaint in the May 28, 2014, letter transmitting the second and final installment of records responsive to PDR #14-970. Declaration of Mary Perry submitted in support of Motion to Dismiss and, in the Alternative, Motion for Summary Judgment at ¶ 8.

REPLY TO DEFENDANTS' MOTION TO DISMISS AND, IN THE
ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT - 1

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1 under the Seattle Municipal Code (SMC) 3.42.030. A plaintiff must comply with statutory
2 service requirements to confer jurisdiction. *Meadowdale Neighborhood Comm. v. City of*
3 *Edmonds*, 27 Wn.App. 261, 267, 616 P.2d 1257 (1980). "When a statute designates a particular
4 person or officer upon whom service of process is to be made in an action ... no other person or
5 officer may be substituted." *Davidheiser v. Pierce Cnty.*, 92 Wn. App. 146, 153-54, 960 P.2d 998
6 (1998); *see also, Nitardy v. Snohomish County*, 105 Wn.2d 133, 712 P.2d 296 (1986);
7 *Landreville v. Shoreline Comm. College Dist. No. 7*, 53 Wn.App. 330, 332, 766 P.2d 1107
8 (1988). Service of process commences the lawsuit, gives the court jurisdiction, and provides a
9 mechanism for tolling the statute of limitations. *Davidheiser*, 92 Wn. App. at 152. In
10 *Davidheiser*, the County had put the plaintiff on notice by pleading that service was improper in
11 its answer. It did so within the statute of limitations, and, as a result, the plaintiff's claim was
12 time barred because she failed to properly serve the County within the statutory period. *Id.* at
13 155. Here, the City twice provided notice to Lee that he had not properly served it; yet he still
14 failed to properly serve his action by May 28, 2015. His claim is now time barred. *See e.g. Tobin*
15 *v. Worden*, 156 Wn. App. 507, 513, 233 P.3d 906, 908 (2010).

16 Lee argues that the statute of limitations should not apply to his complaint because he has
17 "been requesting update installments regularly." Lee's Response to Defendant's Motion of May
18 28, 2015, at p.4. The fact that Lee has made other records requests before or since PDR #14-970
19 has no bearing on whether the statute of limitations has run on that request. The PRA does not
20 provide for 'continuing' or 'standing' requests." *Sargent v. Seattle Police Dep't*, 167 Wn. App. 1,
21 11, 260 P.3d 1006, 1011 (2011) *aff'd in part, rev'd in part*, 179 Wn. 2d 376, 314 P.3d 1093
22 (2013).

1 Lee's excuses are that he is acting pro se and he feared that the Mayor would contrive
2 felony or gross misdemeanor charge against him. Lee's Response at pp.3-4. Both excuses are
3 meritless. A pro se litigant is held to the same standard as an attorney. *West. v. Wash. Ass'n of*
4 *Cnty. Officials*, 162 Wn. App. 120, 137, 252 P.3d 406, 415 (2011). If serving the Mayor was too
5 daunting for him, Lee could have served the City Clerk, hired a process server, or simply asked a
6 friend to serve the City. Instead, he did nothing. Because Lee failed to serve the City as required
7 by 4.28.080(2) within the time required by RCW 42.56.550(6) and RCW 4.16.170, his
8 complaint is now time barred, as are all claims related to any requests made before PDR #14-
9 970, and should be dismissed with prejudice.

10 While the court need not reach the merits of Lee's claims, it may do so because the
11 photographs at issue here are exempt from disclosure under the PRA. Summary judgment is an
12 appropriate procedure to resolve a PRA case, and a trial court may conduct a hearing based
13 solely on affidavits or declarations. RCW 42.56.550(1); *Neighborhood Alliance of Spokane Cnty.*
14 *v. Cnty. of Spokane*, 172 Wn. 2d 702, 740, 261 P.3d 119 (2011) (listing "many Washington
15 cases" that had been resolved on summary judgment).

16 The PRA provides a statutory framework for disclosure of public records. It does not
17 provide a forum, as Lee would have it, for litigating personal theories about Kurt Cobain's death
18 through the testimony of the 100 plus potential witnesses he has identified. Perry Dec. at ¶¶4-5,
19 Exhibits 1 and 2. Lee's theories are irrelevant to this case because allegations concerning the
20 adequacy of an investigation do not warrant disclosure of information that would violate an
21 individual's right to privacy. *Bellevue John Does 1-11 v. Bellevue Sch. Dist. #405*, 164 Wn. 2d
22 199, 221, 189 P.3d 139, 150-51 (2008); *see also, Nat'l Archives & Records Admin. v. Favish*,
23 541 U.S. 157, 174, 124 S.Ct. 1570, 158 L.Ed.2d 319 (2004).

REPLY TO DEFENDANTS' MOTION TO DISMISS AND, IN THE
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1 The crime scene and autopsy photos Lee gleaned from television programs and websites
2 are equally irrelevant without any indication whether family members authorized disclosure or
3 they were otherwise legally obtained. Perry Dec at ¶ 6, Exh 3

4 Lee argues that Cobain family members must voice their objections to disclosure for the
5 photographs to be exempt. Family members do not need to be parties or even provide
6 declarations here because the PRA privacy test is an objective standard that agencies routinely
7 apply to exempt/redact records without the involvement of the subject as reflected in multiple
8 court cases. See generally, e.g., *Cowles Pub. Co. v. Pierce Cnty. Prosecutor's Office*, 111 Wn.
9 App. 502, 45 P.3d 620, 624 (2002); *Dawson v. Daly*, 120 Wn.2d 782, 845 P.2d 995 (1993); *City*
10 *of Tacoma v. Tacoma News, Inc.*, 65 Wn. App. 140, 827 P.2d 1094 (1992). Contrary to Lee's
11 allegations, there is evidence that the family objects to disclosure of records in this case because
12 Cobain's widow previously moved for injunctive relief to limit disclosure of other records
13 related to her husband's death. Perry Dec at ¶ 7, Exh 4. Although the Cobain family need not be
14 involved in this matter, Kurt Cobain's widow and daughter have submitted declarations in
15 support of the City's Motion to Dismiss.

16 "Few things are more personal than the graphic details of a close family member's tragic
17 death." *Marsh v. City of San Diego*, 680 F.3d 1148, 1154 (9th Cir. 2012). Courts have found a
18 privacy interest where images or recordings show fear and distress just prior to or at the time of
19 death or graphically depict the decedent in a way that will affect how loved ones remember him
20 or her. See, *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 167, 124 S.Ct. 1570, 158
21 L.Ed.2d 319. *New York Times Co. v. City of New York Fire Dept.*, 770 N.Y.S.2d 324 (N.Y.
22 2004); *N.Y. Times v. Nat'l Aeronautics & Space Admin.*, 782 F.Supp. 628, 633 (D.D.C. 1991);
23 *Miller v. National Broadcasting Co.*, 187 Cal.App.3d 1463, 232 Cal.Rptr. 668 (Cal. 1986).

REPLY TO DEFENDANTS' MOTION TO DISMISS AND, IN THE
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1 Disclosure here would profoundly affect how his loved ones remember Kurt Cobain. His widow
2 refers to the "enormity of the trauma" disclosure would cause. Declaration of Courtney Love
3 Cobain at ¶ 4. His daughter says that she and other family members would be "irreparably
4 scarred" by disclosure. Declaration of Frances Bean Cobain at ¶ 7.

5 The photographs would inevitably be posted online posing a significant threat to both his
6 widow and daughter. Courtney Love Cobain Dec at ¶ 5; Frances Bean Cobain Dec at ¶ 4-5. The
7 death-scene photographs of Kurt Cobain are exempt from disclosure. They should not be "strewn
8 about the Internet and spit back at the family members, accompanied by hateful messages."
9 *Catsouras v. Dep't of California Highway Patrol*, 181 Cal. App. 4th 856, 863, 104 Cal. Rptr. 3d
10 352 (2010).

11 The City respectfully requests that the Court dismiss Lee's Complaint with prejudice

12 DATED this 22nd day of July, 2015.

13
14
15 PETER S. HOLMES
Seattle City Attorney

16
17 By: Mary F. Perry
18 Mary F. Perry, WSBA#15376
19 Jessica Nadelman, WSBA#27569
Assistant City Attorneys
Attorneys for Defendants

DECLARATION OF SERVICE

Marisa Johnson states and declares as follows:

1. I am over the age of 18, am competent to testify in this matter, am a Legal Assistant in the Law Department, Civil Division, Seattle City Attorney's Office, and make this declaration based on my personal knowledge and belief.

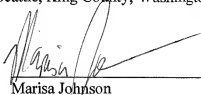
2. On July 22, 2015, I caused to be delivered by United States Mail, First Class, postage pre-paid, addressed to:

Richard Lee
PO Box 31925
Seattle, WA 98103
Email: richardleeseattle@gmail.com

a copy of Reply to Defendants' Motion to Dismiss and, in the Alternative, Motion for Summary Judgment.

3. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 22 day of July, 2015, at Seattle, King County, Washington.



Marisa Johnson